

Review of the book Undercover

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Undercover; Police Surveillance in America. By G. T. Marx. Berkeley, Los Angeles, London: University of California Press, 1988 (*A Twentieth Century Fund Book*)

One of the most essential characteristics of the police apparatus, as it has taken shape since the end of the seventeenth century, is the gathering of information. Being distributed all over the territory of the state in a permanent way, the modern police were and are able to know much of what is going on in society and to organize the

maintenance of public order and law enforcement on the basis of this knowledge. In other words, modern police forces have long since been proactive, perceptive and watchful police forces: *vigilat ut quiescant*. However, within the modern police the collection of intelligence about criminal and political opposition as groups has always been entrusted to one or to different specialized officials or departments. The *inspecteurs de police* in eighteenth century Paris and the *police generale* under the leadership of Joseph Fouché in Napoleonic times are the most well-known older examples of this phenomenon. The investigation departments that in the beginning of the last century were founded by Vidocq within the police of Paris and later in that century by Stiber within the Berlin police force are illustrations that remind us more of the present situation in western democracies.

It is right, therefore, that this book by Gary Marx about police surveillance in America should start with three more or less historical chapters. In the first a sketch of the changing nature of undercover work is given. According to Marx the changes not only concern the spreading of covert police tactics within enforcement agencies like the FBI and the IRS (the Internal Revenue Service) and non-enforcement agencies like the Customs Service, but also the extension of the (technical) means, the forms, the targets and the goals of police surveillance. So, for example, undercover operations are no longer restricted to traditional (consensual) crimes and to well-defined lower-class individual suspects in the field of alcohol and drugs but are also directed against white collar crime and labour racketeering and in that way against organizations and groupings. To make these changes more clear Marx presents in chapter two a selective history of undercover practices in France, Great Britain and the United States. The conclusions he draws from this overview are, first, that whenever undercover means have been used they always pose problems with regard to privacy, liberty and legitimacy, and, second, that the formal means of control have become more extensive and intensive as the state has grown: society has become more impersonal and crime more professional and conspirational. Referring to this latter conclusion, chapter three is devoted to the current context of police surveillance in the United States: the changing crime patterns; the organizational support for undercover police work by the federal government (for example by means of the Law Enforcement Assistance Administration) encouragement by the Supreme Court and the Legislatures; and the advances of adapted technology.

Chapters four and five contain expositions of the types and dimensions of police surveillance and the justifications and rationalizations given for them. With a view to the classification and comparison of undercover operations, Marx identifies within the different forms of repressive, preventive and facilitative operations ten dimensions: grounds for initiation; specificity in target selection; degree of self-selection; correspondence to criminal behaviour; criminal environment; intent and autonomy; carrying out an offence or not; who plays the undercover role; deep and light cover; and the use of the results. To make the moral distinction between crime and criminal justice or, in other words, to find an answer to the question whether undercover work (in a given case) is ethical, admissible, or not, Marx suggests among others the following criteria: the seriousness of the crime; the availability of alternative means; the degree of democratic decision making; the consistency with the letter and the spirit of law; the goal(s) of the operation; the grounds for suspicion; the degree of deception; and the risk of exploitation, corruption, perjury or abuses and harm to police, informers and unwitting third parties.

As can be deduced from the foregoing analysis Marx does not take the view that

police surveillance cannot properly be practised in our society, but that it should be done within special limits and under fixed conditions: it is a necessary evil in his eyes. Therefore it is not at all surprising that in chapters six to eight Marx considers the intended and unintended consequences of undercover work for targets, informers, third parties, and, not least, the police. The range of intended consequences covers the arrest of specific criminals and the recovering of stolen property and/or money, the limitations of the supply of illegal goods and services and the reduction of certain forms of crime. The falsification of criminal evidence, the intimidation of political groupings, the devastation of reputations, the victimization of innocent people, and the ruin of police officers belong to the most important unintended consequences.

Notably, in the light of these negative consequences, the control of undercover operations is a very complicated and sensitive problem. The observations that Marx presents about this problem in chapter nine, conclude with an evaluation of the current internal and external controls, and a discussion of suggested legislative reforms. The main conclusion is that there must be a continuing search for an optimal mixture of internal and external control measures, and that these measures should always be adapted to the forms of police surveillance concerned.

The final chapter of the book connects with the first three. It projects an image of police surveillance in the near future, when more use is made of computers, of visual and audio surveillance, of electronic leashes and so on. And the question Marx raises in this context is our evolution toward a maximum security society.

Marx's book provides a comprehensive and well-balanced analysis of the problem of police surveillance not just in the United States but also in Europe. A better study has not been written on the problem. Most of the existing literature consists of one-sided juridical expositions, superficial journalistic accounts, practice-oriented police literature and sociological case-studies. Moreover the crystal-clear construction and literary style of this study makes it a pleasure to read. Finally, the extensive notes contain a more or less complex American bibliography concerning police surveillance, and provide many cues for further research.

Are there no faults in this marvellous book? There are. First, I have reservations about the methodological account given by Marx of his research methods. He provides few details on the methods and techniques of data collection employed. For example, the reader would acquire deeper understanding of the issues had the size and nature of the police departments visited been given, had the professional quality of the police officers interviewed been described, and so on. Second, I would have valued some attention being paid by Marx to the exportation of the "new" American police undercover tactics back to Western Europe, to Great Britain, France, Germany, Italy, Spain and the Low Countries. An excursion concerning this question would not only have shed light on the peculiar and increasingly important form of (American) foreign politics, but would also have shown how the thoughtless introduction of those "foreign" tactics in the seventies has had very negative, albeit unintended, consequences for the criminal justice system in a country such as Belgium. As I have explained in my book on *The Francois Case* (Antwerpen, Kluwer, 1983), at the time the structures and cultures of the police and the judiciary in this small county were not at all appropriate for the imputed American methods of infiltration, deception and so on. The tragic result was that two narcotics units—one of them headed by the captain of the National Gendarmerie Francois—were totally corrupted!

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